

Ordinance No.: 15-54
Zoning Text Amendment No: 05-10
Concerning: Telecommunication Facility
Amendments
Draft No. & Date: 3 – 7/5/05
Introduced: July 12, 2005
Public Hearing: 9/20/05 – 1:30 p.m.
Adopted: December 6, 2005
Effective: December 26, 2005

**COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND
SITTING AS THE DISTRICT COUNCIL FOR THAT PORTION OF
THE MARYLAND-WASHINGTON REGIONAL DISTRICT WITHIN
MONTGOMERY COUNTY, MARYLAND**

By: Councilmembers Praisner and Knapp

AN AMENDMENT to the Montgomery County Zoning Ordinance for the purpose of:

- defining amateur radio facility and allowing an amateur radio facility as a permitted use in certain zones;
- establishing special exception standards for an amateur radio facility that exceeds a certain height;
- defining radio and television stations and towers and establishing special exception standards for radio and television broadcasting station and tower; and
- generally amending the telecommunication facility zoning regulations.

By amending the following sections of the Montgomery County Zoning Ordinance, Chapter 59 of the Montgomery County Code:

DIVISION 59-A-2	“DEFINITIONS AND INTERPRETATION”
Section 59-A.2.1	“Definitions”
DIVISION 59-B-1	“EXEMPTIONS FROM HEIGHT CONOTROLS”
Section 59-B-1.1	“Belfries, chimneys, etc.”
DIVISION 59-C-1	“RESIDENTIAL ZONES, ONE-FAMILY”
Section 59-C-1.31	“Land uses”
Section 59-C-1.71	“Land uses”
DIVISION 59-C-2	“RESIDENTIAL ZONES, MULTIPLE-FAMILY”
Section 59-C-2.3	“Land uses”
DIVISION 59-C-4	“COMMERCIAL ZONES”
Section 59-C-4.2	“Land uses”
DIVISION 59-C-5	“INDUSTRIAL ZONES”
Section 59-C-5.21	“Allowable uses”
DIVISION 59-C-6	“CENTRAL BUSINESS DISTRICT ZONES”
Section 59-C-6.22	“Land uses”
DIVISON 59-C-8	“TRANSIT STATION DEVELOPMENT AREA”
Section 59-C-8.3	“Land uses”

DIVISION 59-C-9	"AGRICULTURAL ZONES"
Section 59-C-9.3	"Land uses"
DIVISION 59-C-10	"RMX ZONES—RESIDENTIAL MIXED USE DEVELOPMENT"
Section 59-C-10.3.2	"Land uses"
DIVISION 59-G-2	"SPECIAL EXCEPTIONS—STANDARDS AND REQUIREMENTS"
Section 59-G-2.43	"Public utility buildings, public utility structures and telecommunication facility"
Section 59-G-2.44	"Radio and television broadcasting stations and towers"

EXPLANATION:

Boldface indicates a heading or a defined term.

Underlining indicates text that is added to existing laws by the original text amendment.

[Single boldface brackets] indicate text that is deleted from existing law by the original text amendment.

Double underlining indicates text that is added to the text amendment by amendment.

[[Double boldface brackets]] indicate text that is deleted from the text amendment by amendment.

****** indicates existing law unaffected by the text amendment***

OPINION

Zoning Text Amendment No. 05-10 was introduced on July 12, 2005, to define amateur radio facility and allow an amateur radio facility as a permitted use in certain zones; establish special exception standards for an amateur radio facility that exceeds a certain height, define radio and television broadcasting stations and towers and establishing special exception standards for radio and television broadcasting station and tower; and generally amend the telecommunications facility zoning regulations.

The Montgomery County Planning Board in its report to the Council recommended that the text amendment be approved with certain revisions.

The County Council held a public hearing on September 20, 2005 to receive testimony concerning the proposed text amendment. The text amendment was referred to the Management and Fiscal Policy (MFP) Committee for review and recommendation.

The MFP Committee held worksessions on October 17 and November 21, 2005 to review the amendment. After careful review of the ZTA and all material of record, the MFP Committee recommended that ZTA 05-10 be approved with amendments. The Committee supported the key provisions of the ZTA that: (1) identify four classes of telecommunications related uses; (2) define and regulate amateur radio facilities; (3) define and regulate radio and television broadcast stations and towers; and (4) eliminate the exemption from height controls as it applies to a radio tower.

The Committee recommended that the by right height of an amateur radio facility be set at 65 feet, and that additional height be allowed by special exception, only if it can be demonstrated that the additional height is the minimum needed to engage in amateur radio

communications under a Federal Communications Commission (FCC) license. Under the Committee recommendation, any amateur radio facility existing before ZTA Effective Date that exceeds 65 feet in height could continue as a conforming structure.

The Committee also recommended limiting tower height for television and radio broadcasting to 275 feet (the average height of towers in the County), unless it can be demonstrated that the additional height is necessary to comply with the minimum requirements established by the FCC. As originally drafted, the ZTA would have limited radio or television towers to 300 feet; however, the Board of Appeals could have allowed additional height up to 450 feet under certain circumstances.

The Committee recommendations regulating amateur radio facilities and television and radio broadcast towers are believed to be consistent with federal law. Federal law does not set any particular height limit below which a local government may not regulate or suggest language that must be found in a local ordinance; however, it does state that "local regulations which involve placement, screening, or height of antennas based on health, safety, or aesthetic considerations must be crafted to represent the minimum practicable regulation to accomplish the local authority's legitimate purpose". Any television or radio broadcast station or tower special exception application for which a public hearing was held before ZTA Effective Date would be decided based on the standards in effect when the application was filed. Any existing television or radio broadcast station or tower could continue as a conforming structure.

Certain other revisions were recommended by the Committee to clarify ambiguous terms language and better express the intent of the regulations.

The District Council reviewed Zoning Text Amendment No. 05-10 at a worksession held on December 6, 2005, and agreed with the MFP Committee recommendations with one exception. The Council did not agree that a pending special exception application for which a public hearing was held before the ZTA effective date should be decided based on the standards in effect before the ZTA effective date. The Council's amendment provides that only radio and television towers constructed before the ZTA effective date that are not in conformity with the new special exception standards could continue as conforming structures. Any radio or television special exception application filed before the ZTA effective date must be decided based on the standards in effect after the ZTA effective date.

For these reasons and because to approve this amendment will assist in the coordinated, comprehensive, adjusted and systematic development of the Maryland-Washington Regional District located in Montgomery County, Zoning Text Amendment No. 05-10 will be approved as amended.

ORDINANCE

The County Council for Montgomery County, Maryland, sitting as the District Council for that portion of the Maryland-Washington Regional District in Montgomery County, Maryland, approves the following ordinance:

Sec. 1. Division 59-A-2 is amended as follows:

DIVISION 59-A-2. DEFINITIONS AND INTERPRETATION.

59-A-2.1. Definitions.

* * *

Amateur Radio Facility: Any facility used for personal, non-commercial radio communications licensed by the Federal Communications Commission.

* * *

Radio and television broadcasting studio: A facility used for the creation and production of radio, television, and other electronic media programming. This includes studios, stages, editing facilities, post-production facilities, and program distribution via wire or fiber optic cable. A radio and television broadcasting studio does not include a [broadcast] tower at the same location as the studio.

Radio and television broadcasting stations and towers. Any facility used to transmit radio or television communications that are intended to be received by the general public. A television antenna or aerial is not a television station or tower and is exempt from height controls under Division 59-B-1.

* * *

Structure: An assembly of materials forming a construction for occupancy or use including, among others, buildings, stadiums, gospel and circus tents, reviewing stands, platforms, stagings, observation towers, radio and [TV] television broadcasting towers, telecommunications facilities, water tanks, trestles, piers, wharves, open sheds, coal bins, shelters, fences, walls, signs, power line towers, pipelines, railroad tracks and poles.

* * *

Telecommunications facility: Any facility established for the purpose of providing wireless voice, data or [and] image transmission within a designated

service area. A telecommunications facility must not be staffed. A telecommunications facility consists of one or more antennas attached to a support structure and related equipment. Antennas are limited to the following types and dimensions: omni-directional (whip) antennas not exceeding 15 feet in height and 3 inches in diameter; directional or panel antennas not exceeding 6 feet in height and 2 feet in width; and satellite or microwave dish antennas not exceeding 6 feet in diameter. An antenna may be mounted to a structure, a building rooftop or a freestanding monopole in accordance with Sections 59-A-6.12, 59-A-6.14, and 59-G-2.43. Equipment may be located within a building, an equipment cabinet, or an equipment room within an existing building. No lights or signs are permitted on an antenna or support structure unless required by the Federal Communications Commission, the Federal Aviation Administration, or the County.

* * *

Tower: A [[lattice-type]] structure, other than a building, with guyed or freestanding [[,]] supporting antennas used for radio [,] [[and]] or television broadcasting, telecommunications, [[and]] or wireless transmission.

Sec. 2. Division 59-B-1 is amended as follows:

DIVISION 59-B-1. EXEMPTIONS FROM HEIGHT CONTROLS.

Sec. 59-B-1.1. Belfries, chimneys, etc.

The building height limits [set forth in this] under this chapter [shall] do not apply to belfries, chimneys, cupolas, domes, flagpoles, flues, monuments, [radio towers,] television antennae or aerials, spires, tanks, water towers, water tanks, air conditioning units or similar roof structures, and mechanical appurtenances, or, if associated with an optional method development project and where recommended in an approved urban renewal plan, rooftop architectural features, except:

- (a) Where such structures are located within an airport approach area, as designated on the zoning map; or

(b) In the case of air conditioning units or similar roof structures and mechanical appurtenances located on buildings in the RT-6.0, RT-8.0, RT-10.0, RT-12.5 and R-30 Zones or constructed under the standard method of development procedures in the CBD-0.5, CBD-R, and CBD-1 Zones, this exemption is limited to 8 feet.

[No such roof structures, however, may] A roof structure must not have a total area greater than 25 percent of the roof area except that a larger area may be approved for buildings approved by the Planning Board under the Central Business District optional method of development procedure[s in the central business district zones]. A roof structure must not be used for any purpose other than a use incidental to the main use of the building. Exempt space [may] must not be used for retail, general and professional offices, or similar uses.

Sec. 3. DIVISION 59-C-1 is amended as follows:

DIVISION 59-C-1. RESIDENTIAL ZONES, ONE-FAMILY.

* * *

59-C-1.3. Standard development.

* * *

59-C-1.31. Land uses.

* * *

	RE-2	RE-2C	RE-1	R-200	R-150	R-90	R-60	R-40	R-4 plex	RMH 200
(b) Transportation, communication and utilities.										
* * *										
<u>Amateur radio facility.</u>	<u>P*/SE</u>	<u>P*/SE</u>	<u>P*/SE</u>	<u>P*/SE</u>	<u>P*/SE</u>	<u>P*/SE</u>	<u>P*/SE</u>	<u>P*/SE</u>	<u>P*/SE</u>	<u>P*/SE</u>
* * *										
Public utility buildings[, public utility] <u>and</u> structures[, and telecommunications facilities].	[P ¹⁸ /] SE	[P ¹⁸ /] SE	[P ¹⁸ /] SE	[P ¹⁸ /] SE	[P ¹⁸ /] SE	[P ¹⁸ /] SE	[P ¹⁸ /] SE	[P ¹⁸ /] SE	[P ¹⁸ /] SE	[P ¹⁸ /] SE

Radio and television broadcasting stations and towers.	SE	SE	SE	SE	SE	SE	SE	SE	SE	SE
* * *										
Telecommunications facility.	P ¹⁸ /SE	P ¹⁸ /SE	P ¹⁸ /SE	P ¹⁸ /SE	P ¹⁸ /SE	P ¹⁸ /SE	P ¹⁸ /SE	P ¹⁸ /SE	P ¹⁸ /SE	P ¹⁸ /SE

* Must not exceed [[100]] 65 feet in height; however, a special exception for additional height may be granted, by the Board of Appeals if it can be demonstrated that the additional height is the minimum needed to engage in amateur radio communications under a license issued by the Federal Communications Commission. Any amateur radio facility existing before December 26, 2005 that exceeds 65 feet in height is a conforming structure.

18 Subject to Section 59-A-6.12 and 59-A-6.14

59-C-1.7. R-T zones, townhouse, residential.

59-C-1.71. Land uses.

* * *

	R-T 6.0	R-T 8.0	R-T 10.0	R-T 12.5	R-T 15.0
(b) Transportation, communication and utilities.					
<u>Amateur radio facility.</u>	P*/SE	P*/SE	P*/SE	P*/SE	P*/SE
* * *					
Public utility buildings and structures.	SE	SE	SE	SE	SE
* * *					

* Must not exceed [[100]] 65 feet in height; however, a special exception for additional height may be granted, by the Board of Appeals if it can be demonstrated that the additional height is the minimum needed to engage in amateur radio communications under a license issued by the Federal Communications Commission. Any amateur radio facility existing before December 26, 2005 that exceeds 65 feet in height is a conforming structure.

Sec. 4. DIVISION 59-C-2 is amended as follows:

DIVISION 59-C-2. RESIDENTIAL ZONES, MULTIPLE-FAMILY.

* * *

59-C-2.3. Land uses.

* * *

	R-30	R-20	R-10	R-H
(b) Transportation, communication and utilities.				
<u>Amateur radio facility.</u>	<u>P*/SE</u>	<u>P*/SE</u>	<u>P*/SE</u>	<u>P*/SE</u>
* * *				
Public utility buildings and structures.	SE	SE	SE	SE ^[4]
Radio and television broadcasting stations and towers.	SE	SE	SE	
* * *				

^[4] Not including above ground transmission lines nor radio and television broadcasting stations and towers.]

* Must not exceed [[100]] 65 feet in height; however, a special exception for additional height may be granted, by the Board of Appeals if it can be demonstrated that the additional height is the minimum needed to engage in amateur radio communications under a license issued by the Federal Communications Commission. Any amateur radio facility existing before December 26, 2005 that exceeds 65 feet in height is a conforming structure.

Sec. 5. DIVISION 59-C-4 amended as follows:**DIVISION 59-C-4. COMMERCIAL ZONES.**

* * *

59-C-4.2. Land uses.

* * *

	C-T	O-M	C-O	C-P	C-1	C-2	C-3	C-4	C-5	C-6	H-M	Country Inn
(c) Transportation, communication and utilities:												
<u>Amateur radio facility.</u>	<u>P*/SE</u>	<u>P*/SE</u>	<u>P*/SE</u>	<u>P*/SE</u>	<u>P*/SE</u>	<u>P*/SE</u>	<u>P*/SE</u>	<u>P*/SE</u>	<u>P*/SE</u>	<u>P*/SE</u>	<u>P*/SE</u>	<u>P*/SE</u>
* * *												
Public utility buildings [,public utility] and												

structures [and telecommunication facilities].	SE	SE	[P ⁸ /SE	[P ⁸ /SE	SE	[P ⁸ /SE	[P ⁸ /SE	SE	[P ⁸ /SE		[P ⁸ /SE	SE
Radio and television broadcasting stations and towers.			SE/P ⁵⁵			SE/P ⁵⁵	SE/P ⁵⁵					
Radio and television broadcasting studios.			P			P		P		P		
* * *												
Telecommunications facility.	<u>SE</u>	<u>SE</u>	<u>P⁸/SE</u>	<u>P⁸/SE</u>	<u>SE</u>	<u>P⁸/SE</u>	<u>P⁸/SE</u>	<u>SE</u>	<u>P⁸/SE</u>		<u>P⁸/SE</u>	<u>SE</u>

* Must not exceed [[100]] 65 feet in height; however, a special exception for additional height may be granted, by the Board of Appeals if it can be demonstrated that the additional height is the minimum needed to engage in amateur radio communications under a license issued by the Federal Communications Commission. Any amateur radio facility existing before December 26, 2005 that exceeds 65 feet in height is a conforming structure.

⁸ A [freestanding monopole for a] telecommunications facility is a permitted use up to 150 feet in height with a setback of one foot for every foot of height from all residential and agricultural zoned properties.

* * *

⁵⁵ A radio and television broadcasting station without a broadcast tower is a permitted use.

Sec. 6. DIVISION 59-C-5 is amended as follows:

DIVISION 59-C-5. INDUSTRIAL ZONES.

* * *

59-C-5.21. Allowable uses.

* * *

	I-1	I-2	I-3	I-4	R&D	LSC
(c) Transportation, communication and utilities.						
Amateur radio facility.	<u>P*/SE</u>	<u>P*/SE</u>	<u>P*/SE</u>	<u>P*/SE</u>	<u>P*/SE</u>	<u>P*/SE</u>
* * *						
Public utility buildings [public utility] and structures [and telecommunication facilities]. ^[4]	[P]/SE	[P]/SE	[P]/SE	[P]/SE	[P]/SE	SE
Radio and television						

broadcasting stations and towers [,and accessory structures].	SE/P ³³	P	SE/P ³³	SE/P ³³	SE/P ³³	SE/P ³³
Telecommunications facility. ⁴	P	P	P	P	P	P

A [freestanding monopole for a] telecommunications facility is a permitted use up to 199 feet in height with a setback of one foot for every foot of height from all residential and agricultural zoned properties.

Radio and television broadcasting station without a broadcast tower is a permitted use.

Must not exceed [[100]] 65 feet in height; however, a special exception for additional height may be granted, by the Board of Appeals if it can be demonstrated that the additional height is the minimum needed to engage in amateur radio communications under a license issued by the Federal Communications Commission. Any amateur radio facility existing before December 26, 2005 that exceeds 65 feet in height is a conforming structure.

Sec. 7. DIVISION 59-C-6 is amended as follows:

DIVISION 59-C-6. CENTRAL BUSINESS DISTRICT ZONES.

* * *

59-C-6.22. Land uses.

* * *

	CBD-0.5		CBD-R1		CBD-1		CBD-2		CBD-3		CBD-R2	
	S	O	S	O	S	O	S	O	S	O	S	O
(c) Transportation, communication and utilities.												
Amateur radio facility.	P*/ SE	P*/ SE	P*/ SE	P*/ SE	P*/ SE	P*/ SE	P*/ SE	P*/ SE	P*/ SE	P*/ SE	P*/ SE	P*/ SE
* * *												
Public utility buildings and structures.		SE		SE		SE		SE		SE		SE
Radio and television broadcasting studio.					P	P	P	P	P	P		
Radio and television stations and towers.				SE		SE		SE		SE		SE
* * *												

Must not exceed [[100]] 65 feet in height; however, a special exception for additional height may be granted, by the Board of Appeals if it can be demonstrated that the additional height is the minimum needed to engage in amateur radio communications under a license issued by the Federal Communications Commission. Any amateur radio

facility existing before December 26, 2005 that exceeds 65 feet in height is a conforming structure.

Sec. 8. Division 59-C-8 is amended as follows:

DIVISION 59-C-8. TRANSIT STATION DEVELOPMENT AREA ZONES.

* * *

59-C-8.3. Land uses.

	TS-R	TS-M
(b) Transportation, communication and utilities.		
Amateur radio facility.	P*/SE	P*/SE
* * *		
Public utility buildings and structures.		P
Radio and television broadcasting studios.		SE
* * *		

* Must not exceed [[100]] 65 feet in height; however, a special exception for additional height may be granted, by the Board of Appeals if it can be demonstrated that the additional height is the minimum needed to engage in amateur radio communications under a license issued by the Federal Communications Commission. Any amateur radio facility existing before December 26, 2005 that exceeds 65 feet in height is a conforming structure.

Sec. 9. DIVISION 59-C-9 is amended as follows:

DIVISION 59-C-9. AGRICULTURAL ZONES.

* * *

59-C-9.3. Land uses.

* * *

	Rural	RC	LDRC	RDT	RS	RNC
(f) Transportation, Communication and Utilities:						
Airstrip, associated with farm.		SE ²	SE	SE		
Amateur radio facility.	P*/SE	P*/SE	P*/SE	P*/SE	P*/SE	P*/SE
* * *						
Public utility buildings [, public utility] and structures [and telecommunication facilities 33].	SE	SE	SE	SE	[P ³² /] SE	SE ²

Radio or television broadcasting [station or tower] stations and towers.	SE	SE ²	SE ²	SE	SE	SE
Telecommunications facility.	P33/SE	P33/SE	P33/SE	P/33SE	P ³² /SE	SE ²

2 This use or class or uses is not permitted in the portion of [a] any [rural] cluster development regulated by section 59-9.52 or in any [the] rural open space area [as] regulated by section 59-C-9.57[, except as noted in those sections].

32 A [freestanding monopole for a] telecommunications facility is a permitted use if the height does not exceed the building height of the zone and the monopole is setback one foot for every foot of height from the property line.

33 A [freestanding monopole for a] telecommunications facility is a permitted use up to 199 feet in height within an overhead transmission line right-of-way but must not be any closer than 300 feet to any residence .

* Must not exceed [[100]] 65 feet in height; however, a special exception for additional height may be granted, by the Board of Appeals if it can be demonstrated that the additional height is the minimum needed to engage in amateur radio communications under a license issued by the Federal Communications Commission. Any amateur radio facility existing before December 26, 2005 that exceeds 65 feet in height is a conforming structure.

Sec. 10. DIVISION 59-C-10. RMX ZONES—RESIDENTIAL MIXED USE DEVELOPMENT.

* * *

59-C-10.3.2. Land uses.

	RMX-1 RMX-1/TDR	RMX-2 RMX-2/TDR	RMX-2C	RMX-3 RMX-3/TDR	RMX-3C
(b) Transportation, Communication, and Utilities:					
Amateur radio facility.	P*/SE	P*/SE	P*/SE	P*/SE	P*/SE
* * *					
Public utility buildings and structures.	SE	SE	SE	SE	SE
Radio and television broadcasting studio.	P	P	P	P	P
* * *					

* Must not exceed [[100]] 65 feet in height; however, a special exception for additional height may be granted, by the Board of Appeals if it can be demonstrated that the additional height is the minimum needed to engage in amateur radio communications under a license issued by the Federal Communications Commission. Any amateur radio facility existing before December 26, 2005 that exceeds 65 feet in height is a conforming structure.

Sec. 11. DIVISION 59-G-2 is amended as follows:

DIVISION 59-G-2. SPECIAL EXCEPTIONS—STANDARDS AND REQUIREMENTS.

* * *

Sec. 59-G-2.00.5. Amateur radio facility.

An amateur radio facility must satisfy the following standards:

(1) An amateur radio facility must not exceed 65 feet in height, unless it can be demonstrated that the additional height is the minimum needed to engage in radio communications under a license issued by the Federal Communications Commission. At the completion of construction, before the support structure may be used to transmit or receive any signal, and before the final inspection pursuant to the building permit, the applicant must certify to the Department of Permitting Services that the height and location of the support structure are in conformance with the height and location of the support structure as authorized in the building permit.

(2) Any amateur radio facility existing before December 26, 2005 that exceeds 65 feet in height is a conforming structure.

* * *

Sec. 59-G-2.43. Public utility buildings[, public utility] and structures [and telecommunication facility].

(a) A public utility building or public utility structure[[, not otherwise permitted,]] may be allowed by special exception. The findings of this subsection (a) do not apply to electric power transmission or distribution lines carrying in excess of 69,000 volts. For other buildings or structures regulated by this section, the Board must make the following findings:

- (1) The proposed building or structure at the location selected is necessary for public convenience and service.
- (2) The proposed building or structure at the location selected will not endanger the health and safety of workers and residents in the community and will not substantially impair or prove detrimental to neighboring properties.

(b) A public utility building allowed in any residential zone, must, whenever practicable, have the exterior appearance of a residential building[s] and must have suitable landscaping, screen planting and fencing, wherever deemed necessary by the Board.

(c) The Board may approve a public utility building and public utility structure exceeding the height limits of the applicable zone if, in the opinion of the Board, adjacent residential developments and uses will not be adversely affected by the proposed use.

[(d) Any proposed broadcasting tower must have a setback of one foot from all property lines for every foot of height of the tower; provided, that any broadcasting tower lawfully existing on September 1, 1970, is exempt from the setback limitations imposed by this subsection, and may be continued, structurally altered, reconstructed or enlarged; provided further, that any structural change, repair, addition, alteration

or reconstruction must not result in increasing the height of such tower above the then existing structurally designed height.]

[(e)] (d) Examples of public utility buildings and structures for which special exceptions are required under this section are buildings and structures for the occupancy, use, support or housing of switching equipment, regulators, stationary transformers and other such devices for supplying electric service; telephone offices; railroad, bus, trolley, air and boat passengers stations; [radio or television transmitter towers and stations; telecommunication facilities;] and above ground pipelines. [Additional standards for telecommunication facilities are found in subsection (j).]

[(f)] (e) Reserved.

[(g)] (f) In addition to the authority granted by Section 59-G-1.22, the Board may attach to any grant of a special exception under this section other conditions that it may deem necessary to protect the public health, safety or general welfare.

[(h)] (g) Petitions for special exception under this section may be filed on project basis.

[(i)] (h) A petitioner under this section is considered an interested person for purposes of filing a request for a special exception if the petitioner states in writing under oath that a bona fide effort has been made to obtain a contractual interest in the subject property for a valid consideration without success, and that there is an intent to continue negotiations to obtain the required interest or in the alternative to file condemnation proceedings should the special exception be granted.

[(j)] Any telecommunication facility must satisfy the following standards:

(1) A support structure must be set back from the property line as follows:

- a. In agricultural and residential zones, a distance of one foot from the property line for every foot of height of the support structure.
- b. In commercial and industrial zones, a distance of one-half foot from property line for every foot of height of the support structure from a property line separating the subject site from commercial or industrial zoned properties, and one foot for every foot of height of the support structure from residential or agricultural zoned properties.
- c. The setback from a property line is measured from the base of the support structure to the perimeter property line.
- d. The Board of Appeals may reduce the setback requirement to not less than the building setback of the applicable zone if the applicant requests a reduction and evidence indicates that a support structure can be located on the property in a less visually obtrusive location after considering the height of the structure, topography, existing vegetation, adjoining and nearby residential properties, if any, and visibility from the street.]

[(2) A support structure must be set back from any off-site dwelling as follows:

- a. In agricultural and residential zones, a distance of 300 feet.
- b. In all other zones, one foot for every foot in height.

c. The setback is measured from the base of the support structure to the base of the nearest off-site dwelling.

d. The Board of Appeals may reduce the setback requirement in the agricultural and residential zones to a distance of one foot from an off-site residential building for every foot of height of the support structure if the applicant requests a reduction and evidence indicates that a support structure can be located in a less visually obtrusive location after considering the height of the structure, topography, existing vegetation, adjoining and nearby residential properties, and visibility from the street.]

[(3) The support structure and antenna must not exceed 155 feet in height, unless it can be demonstrated that additional height up to 199 feet is needed for service, collocation, or public safety communication purposes. At the completion of construction and before the final inspection of the building permit, the applicant must submit documentation to the Department of Permitting Services as to the height and location of the support structure.]

[(4) The support structure must be sited to minimize its visual impact. The Board may require the support structure to be less visually obtrusive by use of screening, coloring, stealth design, or other visual mitigation options, after considering the height of the structure, topography, existing vegetation and environmental features, and adjoining and nearby residential properties. The support structure and any related equipment]

[buildings or cabinets must be surrounded by landscaping or other screening options that provide a screen of at least 6 feet in height.]

[(5) The property owner must be an applicant for the special exception for each support structure. A modification of a telecommunication facility special exception is not required for a change to any use within the special exception area not directly related to the special exception grant. A support structure must be constructed to hold no less than 3 telecommunication carriers. The Board may approve a support structure holding less than 3 telecommunication carriers if: 1) requested by the applicant and a determination is made that collocation at the site is not essential to the public interest; and 2) the Board decides that construction of a lower support structure with fewer telecommunication carriers will promote community compatibility. The equipment compound must have sufficient area to accommodate equipment sheds or cabinets associated with the telecommunication facility for all the carriers.]

[(6) No signs or illumination are permitted on the antennas or support structure unless required by the Federal Communications Commission, the Federal Aviation Administration, or the County.]

[(7) Every freestanding support structure must be removed at the cost of the owner of the telecommunication facility when the telecommunication facility is no longer in use by any telecommunication carrier for more than 12 months.]

342 [(8) All support structures must be identified by a sign no larger
343 than 2 square feet affixed to the support structure or any
344 equipment building. The sign must identify the owner and the
345 maintenance service provider of the support structure or any
346 attached antenna and provide the telephone number of a person
347 to contact regarding the structure. The sign must be updated
348 and the Board of Appeals notified within 10 days of any change
349 in ownership.]

350 [(9) Outdoor storage of equipment or other items is prohibited.]

351 [(10) Each owner of the telecommunication facility is responsible for
352 maintaining the telecommunication facility, in a safe condition.]

353 [(11) The applicants for the special exception must file with the
354 Board of Appeals a recommendation from the
355 Telecommunications Transmission Facility Coordinating Group
356 regarding the telecommunication facility. The recommendation
357 must be no more than one year old.]

358 [(12) Prior to the Board granting any special exception for a
359 telecommunication facility, the proposed facility must be
360 reviewed by the County Telecommunication Transmission
361 Facility Coordinating Group. The Board and Planning Board
362 must make a separate, independent finding as to need and
363 location of the facility.]

364 [(k) Any telecommunication facility special exception application for
365 which a public hearing was held before November 18, 2002 must be
366 decided based on the standards in effect when the application was
367 filed.]

368 [(1) Any telecommunication facility constructed as of November 18, 2002
369 may continue as a conforming use.]

370 **59-G-2.44. Radio and television broadcasting stations and towers.**

371 [See section 59-G-2.43.]

372 Any radio and television broadcasting station or tower must satisfy the
373 following standards:

374 (1) A support structure must be set back from the property line as
375 follows:

376 a. In agricultural and residential zones, a distance of one foot
377 from the property line for every foot of height of the support
378 structure.

379 b. In commercial and industrial zones, a distance of one-half
380 foot from property line for every foot of height of the
381 support structure from a property line separating the subject
382 site from commercial or industrial zoned properties, and one
383 foot for every foot of height of the support structure from
384 residential or agricultural zoned properties.

385 c. The setback from a property line is measured from the base
386 of the support structure to the [[perimeter]] property line.

387 d. The Board of Appeals may reduce the setback requirement
388 to not less than the building setback of the applicable zone if
389 the applicant requests a reduction and evidence indicates
390 that a support structure can be located on the property in a
391 less visually obtrusive location after considering the height
392 of the structure, topography, existing vegetation, adjoining
393 and nearby residential properties, if any, and visibility from
394 the street.

(2) A support structure must be set back from any off-site dwelling as follows:

- a. In agricultural and residential zones, a distance of ~~[[300]]~~ 275 feet.
- b. In all other zones, one foot for every foot in height.
- c. The setback is measured from the base of the support structure to the base of the nearest off-site dwelling.
- d. The Board of Appeals may reduce the setback requirement in the agricultural and residential zones to a distance of one foot from an off-site residential building for every foot of height of the support structure if the applicant requests a reduction and evidence indicates that a support structure can be located in a less visually obtrusive location after considering the height of the structure, topography, existing vegetation, adjoining and nearby residential properties, and visibility from the street.

(3) The ~~[[support]]~~ structure supporting the antenna used for radio and television broadcasting must not exceed ~~[[300]]~~ 275 feet in height, unless it can be demonstrated that the additional height ~~[[up to 450 feet is needed for service, collocation, or public safety communication purposes]]~~ is necessary to comply with the minimum requirements established by the Federal Communications Commission. At the completion of construction, ~~[[and]]~~ before ~~[[the final inspection of the building permit, the applicant must submit documentation to the Department of Permitting Services as to the height and location~~

422 of the support structure.]] the support structure may be used to
423 transmit any signal, and before the final inspection pursuant to
424 the building permit, the applicant must certify to the
425 Department of Permitting Services that the height and location
426 of the support structure is in conformance with the height and
427 location of the support structure as authorized in the building
428 permit.

429 (4) The support structure must be sited to minimize its visual
430 impact. The Board may require the support structure to be less
431 visually obtrusive by use of screening, coloring, stealth design,
432 or other visual mitigation options, after considering the height
433 of the structure, topography, existing vegetation and
434 environmental features, and adjoining and nearby residential
435 properties. The support structure and any related equipment
436 buildings or cabinets must be surrounded by landscaping or
437 other screening options that provide a screen of at least 6 feet in
438 height.

439 (5) The property owner must be an applicant for the special
440 exception for each support structure. Any radio or television
441 antenna that is collocated on an existing tower with another
442 radio or television antenna is not required to obtain a special
443 exception. A modification of a radio and television station or
444 tower special exception is not required for a change to any use
445 within the special exception area not directly related to the
446 special exception grant. The equipment compound must have
447 sufficient area to accommodate equipment sheds or cabinets
448 associated with a station or tower.

- 449 (6) No signs or illumination are permitted on the antennas or
450 support structure unless required by the Federal
451 Communications Commission, the Federal Aviation
452 Administration, or the County.
- 453 (7) Every freestanding radio and television broadcasting tower
454 must be removed at the cost of the owner when no longer in use
455 for more than 12 months.
- 456 (8) All support structures must be identified by a sign no larger
457 than 2 square feet affixed to the support structure or any
458 equipment building. The sign must identify the owner and the
459 maintenance service provider of the support structure or any
460 attached antenna and provide the telephone number of a person
461 to contact regarding the structure. The sign must be updated
462 and the Board of Appeals notified within 10 days of any change
463 in ownership.
- 464 (9) Outdoor storage of equipment or other items is prohibited.
- 465 (10) Each owner of the facility is responsible for maintaining the
466 facility[[,]] in a safe condition.
- 467 (11) The applicants for the special exception must file with the
468 Board of Appeals a recommendation from the Transmission
469 Facility Coordinating Group regarding the tower. The
470 recommendation must be no more than one year old.
- 471 (12) Prior to the Board granting any special exception for a radio
472 and television broadcasting [station or] tower, the proposed
473 facility must be reviewed by the County Transmission Facility
474 Coordinating Group.

475 [[(b) Any radio and television broadcasting station or tower special
476 exception application for which a public hearing was held before
477 December 26, 2005 must be decided based on the standards in effect
478 when the application was filed.]]

479 [[(c)] (b) Any radio and television broadcasting station or tower existing as of
480 December 26, 2005 [[is exempt from the setback and height
481 limitations imposed by this section, and may be continued,
482 structurally altered, reconstructed or enlarged]] may continue as a
483 conforming [[use]] structure. However any structural change, repair,
484 addition, alteration or reconstruction of a tower existing before
485 December 26, 2005 must not result in an increase in the height of the
486 tower above the height of the tower as it existed before December 26,
487 2005.

488
489 **59-G-2.58. [Reserved] Telecommunications facility.**

490 (a) Any telecommunications facility must satisfy the following standards:

491 (1) A support structure must be set back from the property line as
492 follows:

493 a. In agricultural and residential zones, a distance of one foot
494 from the property line for every foot of height of the support
495 structure.

496 b. In commercial and industrial zones, a distance of one-half
497 foot from property line for every foot of height of the
498 support structure from a property line separating the subject
499 site from commercial or industrial zoned properties, and one
500 foot for every foot of height of the support structure from
501 residential or agricultural zoned properties.

- 502 c. The setback from a property line is measured from the base
503 of the support structure to the perimeter property line.
- 504 d. The Board of Appeals may reduce the setback requirement
505 to not less than the building setback of the applicable zone if
506 the applicant requests a reduction and evidence indicates
507 that a support structure can be located on the property in a
508 less visually obtrusive location after considering the height
509 of the structure, topography, existing vegetation, adjoining
510 and nearby residential properties, if any, and visibility from
511 the street.

512 (2) A support structure must be set back from any off-site dwelling
513 as follows:

- 514 a. In agricultural and residential zones, a distance of 300
515 feet.
- 516 b. In all other zones, one foot for every foot in height.
- 517 c. The setback is measured from the base of the support
518 structure to the base of the nearest off-site dwelling.
- 519 d. The Board of Appeals may reduce the setback
520 requirement in the agricultural an residential zones to a
521 distance of one foot from an off-site residential building
522 for every foot of height of the support structure if the
523 applicant requests a reduction and evidence indicates that
524 a support structure can be located in a less visually
525 obtrusive location after considering the height of the
526 structure, topography, existing vegetation, adjoining and
527 nearby residential properties, and visibility from the
528 street.

(3) The support structure and antenna must not exceed 155 feet in height, unless it can be demonstrated that additional height up to 199 feet is needed for service, collocation, or public safety communication purposes. At the completion of construction, [[and]] before the [[final inspection of the building permit, the applicant must submit documentation to the Department of Permitting Services as to the height and location of the support structure.]] support structure may be used to transmit any signal, and before the final inspection pursuant to the building permit, the applicant must certify to the Department of Permitting Services that the height and location of the support structure is in conformance with the height and location of the support structure as authorized in the building permit.

(4) The support structure must be sited to minimize its visual impact. The Board may require the support structure to be less visually obtrusive by use of screening, coloring, stealth design, or other visual mitigation options, after considering the height of the structure, topography, existing vegetation and environmental features, and adjoining and nearby residential properties. The support structure and any related equipment buildings or cabinets must be surrounded by landscaping or other screening options that provide a screen of at least 6 feet in height.

(5) The property owner must be an applicant for the special exception for each support structure. A modification of a telecommunications facility special exception is not required for a change to any use within the special exception area not

556 directly related to the special exception grant. A support
557 structure must be constructed to hold no less than 3
558 telecommunications carriers. The Board may approve a support
559 structure holding less than 3 telecommunications carriers if: 1)
560 requested by the applicant and a determination is made that
561 collocation at the site is not essential to the public interest; and
562 2) the Board decides that construction of a lower support
563 structure with fewer telecommunications carriers will promote
564 community compatibility. The equipment compound must
565 have sufficient area to accommodate equipment sheds or
566 cabinets associated with the telecommunication facility for all
567 the carriers.

568 (6) No signs or illumination are permitted on the antennas or
569 support structure unless required by the Federal
570 Communications Commission, the Federal Aviation
571 Administration, or the County.

572 (7) Every freestanding support structure must be removed at the
573 cost of the owner of the telecommunications facility when the
574 telecommunications facility is no longer in use by any
575 telecommunications carrier for more than 12 months.

576 (8) All support structures must be identified by a sign no larger
577 than 2 square feet affixed to the support structure or any
578 equipment building. The sign must identify the owner and the
579 maintenance service provider of the support structure or any
580 attached antenna and provide the telephone number of a person
581 to contact regarding the structure. The sign must be updated

582 and the Board of Appeals notified within 10 days of any change
583 in ownership.

584 (9) Outdoor storage of equipment or other items is prohibited.

585 (10) Each owner of the telecommunications facility is responsible
586 for maintaining the telecommunications facility, in a safe
587 condition.

588 (11) The applicants for the special exception must file with the
589 Board of Appeals a recommendation from the
590 [[Telecommunications]] Transmission Facility Coordinating
591 Group regarding the telecommunications facility. The
592 recommendation must be no more than one year old.

593 (12) Prior to the Board granting any special exception for a
594 telecommunications facility, the proposed facility must be
595 reviewed by the County [[Telecommunication]] Transmission
596 Facility Coordinating Group. The Board and Planning Board
597 must make a separate, independent finding as to need and
598 location of the facility.

599 (b) Any telecommunications facility special exception application for
600 which a public hearing was held before November 18, 2002 must be
601 decided based on the standards in effect when the application was
602 filed.

603 (c) Any telecommunications facility constructed as of November 18,
604 2002 may continue as a conforming use.


605 **Sec. 12. Effective date.** This ordinance becomes effective 20 days after the
606 date of Council adoption.

607

608 This is a correct copy of Council action.

609

610

A handwritten signature in cursive script, reading "Linda M. Lauer", is written over a horizontal line.

611

Linda M. Lauer, Clerk of the Council

